

SERVED AUGUST 10, 2007

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.

2007 AUG 21 A 10:21

IN THE MATTER OF

BROOKS BEAUTY SUPPLY

FAA DOCKET NO. CP06WP0010
(Civil Penalty Action)DMS NO. FAA-2006-24937-10

**ADMINISTRATIVE LAW JUDGE'S ORDER GRANTING
IN PART AND DENYING IN PART COMPLAINANT'S
MOTION FOR DEFAULT JUDGMENT**

The Complainant has filed a motion seeking a judgment by default, holding the Respondent liable for the full amount (\$35,000) of the civil penalty it has claimed in its amended complaint.¹ The motion is based upon the alleged failure of the Respondent to file an answer to the complaint, as required by § 13.209 of the Rules of Practice. Under paragraph (f) of that section, the respondent's failure to file an answer without good cause "shall be deemed an admission of the truth of each allegation contained in the complaint."

It is true, as the Complainant says, that the Respondent has not filed a formal answer in compliance with § 13.209. It is also true that the Respondent has had ample warning that he was required to file an answer. The Complainant's counsel reminded him of his duty at the time the complaint was served, and I issued an order in response to the October 17, 2006 amendment, reminding the Respondent that it "must file its answer to

¹ The original complaint, filed on July 12, 2006, sought a civil penalty of \$37,500. On October 16, 2006, the complaint was amended to reduce the ad damnum to \$35,000.

the complaint, as amended, or a motion addressed to the sufficiency of the complaint, not later than November 6, 2006.” No answer was forthcoming.

The file contains a letter, dated July 3, 2006 and signed by Eugene Brooks, Jr., as President of the Respondent, addressed to the hearing docket clerk. In that letter, Mr. Brooks states that his firm “did not knowingly nor purposefully send the hazardous material to the address stated in the letter.” He also stated that his firm had not previously shipped hazardous materials and had not done so since the incident that gave rise to the claim against it. Finally, he asserted that “I am not able to pay the \$37,500 penalty” initially demanded by the FAA. That is the only communication from the Respondent that I have before me.

I read the Respondent’s July 3, 2006 letter as an admission that the Respondent shipped the hazardous materials (“Motions Oil Moisturizer Hair Relaxer”)² by air via UPS as claimed by the FAA’s complaint without the appropriate shipping papers, certifications, marking on the outer container, emergency information or HAZMAT training for its employees. The notion that the shipment occurred through inadvertence or without the requisite mens rea is absurd on its face; I take administrative notice of the fact that UPS, a shipping company, does not wrest packages from unwilling customers and fly them from Memphis to Honolulu. Hence, it is clear that the Complainant is entitled to a judgment on the issue of liability, since the Respondent has never filed a satisfactory answer on that issue.

This leaves for decision the question of the appropriate amount of the civil penalty that should be assessed. On that issue the Respondent is entitled to a hearing so that we can resolve the question that Mr. Brooks raised in his July 3, 2006 letter: whether or not his firm is able to pay the amount of the penalty (now \$35,000) that the Complainant has sought.

² This material is classified as a Corrosive Solid under the Department’s Hazardous Materials Regulations, according to the FAA.

It follows, therefore, that the Complainant's motion for summary disposition must be, and it hereby is, granted on the issue of liability. The motion is denied on the issue of the amount of the civil penalty that is appropriate for the violations of the Hazardous Materials Regulations alleged in the complaint and never properly denied in an answer filed by the Respondent.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Isaac D. Benkin". The signature is fluid and cursive, with the first name "Isaac" and last name "Benkin" clearly distinguishable.

Isaac D. Benkin
Administrative Law Judge

FAA Docket No.
CP06WP0010
(Civil Penalty Action)

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Hearing Docket
Federal Aviation Administration
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